

FOR PUBLICATION

IN THE DISTRICT COURT OF THE VIRGIN ISLANDS
DIVISION OF ST. THOMAS & ST. JOHN

VIRGIN ISLANDS TELEPHONE)	
CORPORATION,)	
)	
Plaintiff,)	
)	Civil No. 2006-18
v.)	
)	
RURAL TELEPHONE FINANCE)	
COOPERATIVE, GREENLIGHT)	
CAPITAL QUALIFIED, L.P.P.,)	
GREENLIGHT CAPITAL L.P., and)	
GREENLIGHT CAPITAL OFFSHORE,)	
LTD.,)	
)	
Defendants.)	
)	

ATTORNEYS:

Joel H. Holt, Esq.
St. Croix, U.S.V.I.
For the Plaintiff,

J. Daryl Dodson, Esq.
St. Thomas, U.S.V.I.
For the Defendant RTFC,

Richard H. Hunter, Esq.
St. Thomas, U.S.V.I.
For the Defendant RTFC,

Gerard G. Pecht, Esq.
Houston, TX
For the Defendant RTFC,

Thomas J. Allingham II, Esq.
Wilmington, DE
For the Defendant Greenlight,

Matthew J. Duensing, Esq.
St. Thomas, U.S.V.I.
For the Defendant Greenlight.

MEMORANDUM OPINION

Before the Court is plaintiff Virgin Islands Telephone Corporation's ("Vitelco") motion for a temporary restraining order ("TRO") and preliminary injunction against defendants Greenlight Capital Qualified, L.P.P., Greenlight Capital, L.P., and Greenlight Capital Offshore, LTD, (collectively "Greenlight").¹ The relevant facts are outlined below.

I. FACTUAL AND PROCEDURAL BACKGROUND

On May 5, 2004, Greenlight obtained favorable rulings in the Delaware Chancery Court against Emerging Communications, Inc. ("Emcom"), Innovative Communications Corporation, LLC ("ICC-LLC"), and Innovative Communications Corporation ("ICC") (collectively "the ICC entities")² and Jeffrey Prosser ("Prosser").³ The rulings were reduced to written judgments on January 9, 2006. The judgment against Emcom was for the principal amount of \$28,548,915. *In re Emerging Comm. Inc., Shareholders Litig.* (Emcom Judgment), Civ. No. 16415, slip op. at

¹ The motion was filed on January 19, 2006, but the parties have agreed to forebear until this matter is resolved.

² Vitelco is a public utilities company that is a subsidiary of ICC. ICC-LLC owns Emcom, and ICC is a subsidiary of Emcom.

³ Jeffrey Prosser is the Chief Executive Officer and President of ICC and a member of the Board of Vitelco.

1 (Del. Ch. Jan. 9, 2006).⁴ The judgment against ICC-LLC, ICC,⁵ and Prosser was for the principal amount of \$56,341,843. *In re Emerging Comm. Inc., Shareholders Litig.* (ICC and Prosser Judgment), Civ. No. 16415, slip op. at 1 (Del. Ch. Jan. 9, 2006).

On October 28, 2005, defendants Greenlight and Rural Telephone and Finance Cooperative⁶ ("RTFC") entered into an inter-creditor agreement (hereinafter "the Inter-Creditor Agreement") to "share claims and to subordinate claims against the ICC entities, including Jeffrey Prosser." Vitelco's Mot. for TRO and/or Preliminary Injunction (hereinafter "Vitelco's Mot.") Ex. C-3, Dep. Test. of Steven Lilly (RTFC Chief Financial Officer) at 18 (hereinafter "Lilly Test."), Jan. 13, 2006. In the Inter-Creditor Agreement, Greenlight agreed to:

undertake the filing of involuntary Bankruptcy Proceedings under the Bankruptcy Code with respect to Innovative Corp. and, if necessary or desirable, some or all of the other Emerging Entities [that is, Emerging Communications ("Emcom") and Innovative Communications Corporation LLC ("ICC-LLC") and Innovative Communications Corp. ("ICC")] that have not voluntarily filed such a Bankruptcy Proceedings . . . no later than 45 days following the entry of a judgment on the Delaware Ruling.

⁴ While there are two judgments, each bear the same caption and civil action number. The judgments are distinguished only by the party against whom the judgment is entered.

⁵ The Delaware judgment involved the now dissolved ICC.

⁶ RTFC provides low-interest loans to rural telecommunications companies and their affiliates.

RTFC's Supplemental Br. on Vitelco's Mot., Ex. A at 1, Feb. 8, 2006; see also Lilly Test. at 33. RTFC retained the right to terminate the agreement if Greenlight did not force the ICC entities into bankruptcy within forty-five days of the entry of the Delaware Court's judgment. See Lilly Test. at 120-21.

Initially, Vitelco was mentioned specifically in the Inter-Creditor Agreement at the time Vitelco filed its motion. In Section 4.4 of that agreement, RTFC and Greenlight agreed to "cooperate to seek a mutually satisfactory restructuring of (1) the obligations of Vitelco to its creditors and (2) the terms and conditions of Vitelco's outstanding preferred shares." RTFC's Supplemental Br. on Vitelco's Mot., Ex. A at 14-15, Feb. 8, 2006. RTFC and Greenlight have since agreed to eliminate and strike that portion of their agreement. RTFC's Notice of Filing Letter Agreement Regarding Intercreditor Agreement, Ex. A, Feb. 10, 2006.

On January 19, 2006, Vitelco filed this action alleging that the Inter-Creditor Agreement is a "take-over agreement" aimed at taking control of Vitelco. In its Complaint, Vitelco argues that Greenlight and RTFC "have taken or are about to take steps to seize the legal and/or equitable ownership of Vitelco through execution, filing of bankruptcy or some other legal proceeding as part of the execution of Greenlight's judgment against ICC-LLC,

Emcom and/or Prosser, any one of which acts violate the express provisions of 30 V.I.C. § 43(a)."⁷ Compl. at 9-10.

Vitelco requests a preliminary injunction prohibiting the defendants from "attempting to obtain control of Vitelco, whether directly or indirectly without first obtaining [Virgin Islands Public Services Commission ("PSC")] consent as required by 30 V.I.C. § 43(a)." Vitelco's Mot. at 10. Vitelco does not seek to enjoin Greenlight from filing a bankruptcy petition against any of the ICC entities.⁸ Rather it seeks to enjoin the transfer of control of Vitelco that it believes would occur as a result of the appointment of a trustee during the pendency of any bankruptcy proceeding that Greenlight might initiate. See, e.g.,

⁷ Title 30, Section 43(a) of the Virgin Islands Code (hereinafter "Section 43(a)") states:

No person or corporation, whether or not organized under the laws of the Territory, shall sell, acquire or transfer control, either directly, or indirectly of any public utility organized and doing business in this Territory, without first securing authorization from the Commission. Any such acquisition or control without prior authorization shall be void and of no effect.

⁸ The Court asked Vitelco to clarify this position during the February 1, 2006, hearing on the motion:

Court: Before you go on, let me ask you something . . . is, Vitelco . . . actually seeking an injunction on the filing of a bankruptcy petition. Is that the case?

Holt: No, that's not the case. We are objecting to any change in control. . . . And if [Greenlight and RTFC] file a bankruptcy petition and proceed to get an order of relief . . . they will then effectuate that transfer of control . . . [N]o, we're not trying to enjoin the filing of bankruptcy, we're trying to enjoin the change in control.

Hr'g Tr. 58-59, Feb. 1, 2006.

Hr'g Tr. 9, 13, Jan. 31, 2006 ("[Until you get permission from the PSC] if you file a bankruptcy [petition] in Delaware, and you get a trustee appointed, then you've violated this statute."; "[O]nce you get the trustee appointed over Emerging Communications, you've gotten control.").

Vitelco argues that the terms of the Inter-Creditor Agreement will set in motion a three-step process that will culminate in a transfer of control of Vitelco. Hr'g Tr. 17-19, Jan. 31, 2006. The first step is alleged to have taken place when judgment was entered in the Delaware Court on January 9, 2006. *Id.* at 17. Step two will occur with the filing of a bankruptcy petition. *Id.* at 17-19. Step three will occur with the appointment of a receiver or trustee, which Vitelco argues is tantamount to a transfer of control. *Id.*

Vitelco argues that the occurrence of the final step could cause irreparable harm in several ways. First, a transfer of control of Vitelco, absent PSC approval, is a violation of Title 30, Section 43(a) of the Virgin Islands Code [hereinafter "Section 43(a)"]. Vitelco argues that such a statutory violation itself constitutes irreparable harm sufficient to require injunctive relief. Hr'g Tr. 7, Jan. 31, 2006 ("[W]e think irreparable harm is shown just by violation of the statute"); see also Vitelco's Mot. at 6-7 (citing *Gov't of the V.I.*

v. *Virgin Islands Paving, Inc.*, 714 F.2d 283, 286 (3d Cir. 1983)).⁹

Second, Vitelco argues that the PSC could withdraw Vitelco's charter as a public telephone utility. See Hr'g Tr. 17, Feb. 1, 2006 ("[If] the trustee is now appointed ... the PSC could say you just violated the statute because we didn't give that consent."); *Id.* at 17 ("[T]he PSC ... may well say ... if anyone tries to exercise that control, we're going to take your franchise away."). Third, Vitelco states "[the PSC] could freeze Vitelco's assets." Hr'g Tr. 6, Jan. 31, 2006.

Vitelco views these developments as part of "a contract which has obligations which has already begun, which is imminent and will happen." Hr'g Tr. 19, Jan. 31, 2006. Vitelco asserts

⁹ *Virgin Islands Paving* generally held that a court "may grant preliminary equitable relief on a showing of a statutory violation without requiring any additional showing of irreparable harm." 714 F.2d at 286. That holding has been the subject of some debate. Subsequent decisions by the Third Circuit arguably limit the scope of *Virgin Islands Paving*. See *Natural Res. Def. Counsel, Inc., v. Texaco Ref. & Mktg., Inc.*, 906 F.2d 934, 941 (3d Cir. 1990) (district court may issue a permanent injunction only after a showing both of irreparable injury and inadequacy of legal remedies); *Rosa v. Resolution Trust Corp.* 938 F.2d 383, 400 (3d Cir. 1991) (requiring irreparable harm analysis under ERISA). However, in *Temple Univ. v. White*, 941 F.2d 201 (3d Cir. 1991), the Third Circuit declined to resolve "whether a permanent injunction requires the showing of irreparable injury" in a statutory violation case. *Id.* at 214. Since that time, a number of cases have followed *Virgin Islands Paving's* holding. See generally *Berne Corp. v. Gov't of the V.I.*, 262 F. Supp. 2d 540 (D.V.I. 2003); *SEPTA v. Pa. PUC*, 210 F. Supp. 2d 689 (E.D. Pa. 2002) (finding "convincing the logic of those cases applying a relaxed standard for issuing injunctions upon a showing of a statutory violation"); *Assisted Living Assocs. L.L.C. v. Moorestown Twp.*, 996 F. Supp. 409 (D.N.J. 1998). In any event, the Court need only reach this issue if Vitelco demonstrates an imminent violation of Section 43(a).

that under the Inter-Creditor Agreement, Greenlight only has forty-five days after the entry of the Delaware judgment to file the petition for bankruptcy. Vitelco's Mem. Re: Issues Raised by Court at Feb. 7, 2006, Conf. at 5, Feb. 8, 2006. The Delaware judgment was entered on January 9, 2006.

II. ANALYSIS

The Court may grant a preliminary injunction only if the plaintiff shows: (1) a reasonable probability of success on the merits; (2) irreparable injury will occur to the appellant if the relief is not granted; (3) less harm will result to the non-movants if the relief is granted than to the movant if the relief is not granted; and (4) the public interest, if any, weighs in favor of the movant. *Civil Liberties Union of New Jersey v. Black Horse Pike Reg. Bd. of Educ.*, 84 F.3d 1471 (3d Cir. 1996).

"The burden lies with the [movant] to establish every element in its favor, or the grant of a preliminary injunction is inappropriate." *P.C. Yonkers, Inc. v. Celebrations the Party & Seasonably Superstore, LLC*, 428 F.3d 504, 508 (3d Cir. 2005). The burden of showing irreparable harm is satisfied only when the movant demonstrates a "clear showing of immediate irreparable injury, or a presently existing actual threat." *Acierno v. New Castle County*, 40 F.3d 645, 655 (3d Cir. 1994) (quoting *Ammond v.*

McGahn, 532 F.2d 325, 329 (3d Cir. 1976)). The harm must be "imminent." *Punnett v. Carter*, 621 F.2d 578, 587 (3d Cir. 1980). It cannot "occur in some indefinite future." *Campbell Soup Co. v. ConAgra, Inc.*, 977 F.2d 86, 91 (3d Cir. 1992).

With Greenlight having already obtained entry of judgment, Vitelco contends that Greenlight is now poised to file an involuntary bankruptcy petition against Emcom or ICC-LLC, thereby setting up an imminent transfer of control of Vitelco. That transfer arguably will occur with the appointment of a trustee.¹⁰

A. Appointment of a Trustee

While Vitelco states there will be irreparable harm if a trustee is appointed for one of its parent companies, the appointment of a trustee under the Bankruptcy Code is neither mandatory nor automatic. Under the Bankruptcy Code, a court may appoint a trustee, after notice to the opposing party and a hearing in two circumstances:

(1) for cause, including fraud, dishonesty, incompetence, or gross mismanagement of the affairs of the debtor by current

¹⁰ As a threshold matter, it is worth noting that while the Inter-Creditor Agreement requires Greenlight to file a bankruptcy petition against Emcom or ICC-LLC within forty-five days of the entry of a judgment in the Delaware ruling, Greenlight has not yet filed one. Additionally, Vitelco does not seek to enjoin the filing of a bankruptcy petition. Finally, in a letter to the Court, Greenlight "pledged not to file a Chapter 7 bankruptcy petition for a period of at least 6 months from the date of this letter." *Letter from Greenlight & Thomas J. Allingham, II*, Feb. 8, 2006. Accordingly, the Court's analysis presumes there is no imminent threat of a Chapter 7 filing.

management, either before or after the commencement of the case, or similar cause . . . or

(2) if such appointment is in the interests of creditors, any equity security holders, and other interests of the estate

11 U.S.C. § 1104(a).

The party seeking the appointment of a trustee in a Chapter 11 bankruptcy must prove the need for a trustee by clear and convincing evidence. *In re Marvel Entm't Group*, 140 F.3d 463, 471 (3d Cir. 1998). "It is well settled that the appointment of a trustee should be an exception rather than a rule." *Id.* (quoting *In re Sharon Steel Corp.*, 871 F.2d 1217, 1226 (3d Cir. 1989)); see also *Official Comm. of Asbestos Claimants v. G-I Holdings, Inc.*, 385 F.3d 313, 320 (3d Cir. 2004) (holding that trustee was not warranted under 1104(a)(2) despite the "considerable acrimony between the debtor and the asbestos claimants"); *In re North Star Contracting Corp.*, 128 B.R. 66 (S.D.N.Y. 1991). Currently, there is no petition, no indication that a trustee will be sought if a petition is filed, and no indication that any effort to seek such an appointment would be successful. Those factors militate against a finding that the appointment of a trustee is imminent or that it will happen at all.

B. The Potential Harm to Vitelco

Perhaps the most offensive portion of the Inter-Creditor Agreement which Vitelco states is indicative of the defendants' intent to take-over Vitelco is Section 4.4. As Vitelco explains,

[O]n page 15 [of the Inter-Creditor Agreement], where they talk about Independent Actions by the Parties, it says, in the last sentence, in addition to the foregoing, RTFC and the Greenlight Entities shall cooperate to seek a mutually restructuring of the obligations of VITELCO to its creditors -- so they mention VITELCO -- and the terms and conditions of VITELCO's outstanding preferred shares.

So this document is designed specifically to take over that entity.

Hr'g Tr. 14, Jan. 31, 2006 (emphasis added). However, that reference to Vitelco has since been removed. The removal of any mention of Vitelco from the Inter-Creditor Agreement belies Vitelco's claim that the "document is designed specifically to take over [Vitelco]" and makes the potential harm to Vitelco even more remote.

In general, Vitelco's arguments concerning irreparable harm proceed on the assumption that any efforts to place one of its parent companies in bankruptcy will inevitably result in irreparable harm to Vitelco. That assumption does not consider several significant factors. First, Vitelco is a subsidiary of ICC. ICC in turn is a subsidiary of Emcom, which is a subsidiary of ICC-LLC. Accordingly, there are at least two layers between

any potential entity that may be the subject of a bankruptcy petition and Vitelco.

Second, even assuming a trustee is appointed for an indirect parent of Vitelco, such as ICC-LLC or Emcom, this Court has not been presented with any persuasive explanation why such an appointment would directly or indirectly transfer control of Vitelco, an independent subsidiary. Indeed, it is well settled that "absent unusual circumstances, the property of the debtor's subsidiary is not considered property of the debtor by virtue of the debtor's sole ownership of the subsidiary." *Holywell Corp. v. Smith*, 118 B.R. 876, 879 (S.D. Fl. 1990); see also *Parkview Gem Inc. v. Stein (In re Parkview-Gem)*, 516 F.2d 807 (8th Cir. 1975); *In re South Jersey Land Corp.*, 361 F.2d 610 (3d Cir. 1966). At most, the appointment of a trustee over Emcom or ICC-LLC may remotely affect Vitelco. Significantly, there is insufficient evidence to conclude that any such appointment would result in the imminent removal of Vitelco's board, or otherwise transfer control of a separate and distinct corporate entity such as Vitelco.

C. The Role of the PSC and the Bankruptcy Court

Finally, Vitelco anticipates irreparable harm because the PSC could choose not to monitor and regulate any bankruptcy

proceedings that may take place outside of the Virgin Islands. Hr'g Tr. 16-17, 19, Feb. 1, 2006. Indeed, even if the PSC were to become aware of, and be invited to participate in, a bankruptcy proceeding involving Vitelco, Vitelco feels that the PSC would not act.

[E]ven to call them up and invite them is even equally condescending to them because they don't have to come to the bankruptcy court. . . . [I]f anything else it could inflame them. . . . So [Greenlight and RTFC's offer to notify the PSC does not] take[] care of the problem. Indeed it might even exacerbate the problem

Hr'g Tr. 30, Feb. 1, 2006.

The harm that Vitelco anticipates possibly could occur if this Court assumes that the PSC will be uninvolved and disinterested in any imminent transfer of control of Vitelco. That view, however, is contrary to the PSC's statutory mandate as well as the history of the PSC in fulfilling that mandate. In the past, the PSC has not been reluctant to monitor and regulate the transfer of control of Vitelco.

Indeed, in *Atlantic Tele-Network, Co. v. The Pub. Serv. Comm. of the Virgin Islands*, 841 F.2d 70 (3d Cir. 1988), the PSC insisted that it was required to authorize the transfer of Vitelco. The district court disagreed and ruled against the PSC. Undeterred, the PSC appealed the ruling. The Third Circuit reversed the district court, noting that "the PSC ha[d] broad authority to regulate public utilities" even before Section 43(a)

was enacted to specifically grant the PSC power to approve the transfer of control of a utility. *Id.* at 73.

Greenlight and RTFC have agreed, to the extent a bankruptcy petition is filed, to inform the PSC and Vitelco of such proceeding and to provide Vitelco and the PSC with an opportunity to be heard before seeking the appointment of a trustee. See Hr'g Tr. 7, Feb. 1, 2006. Vitelco's argument that the PSC may simply ignore such notice is unpersuasive. In addition to demonstrating the PSC's broad power, *Atlantic Tele-Network* also demonstrates the PSC's willingness to act. This Court cannot presume that the PSC will sit idly by if one of its regulated entities is subject to a transaction over which the PSC has primary jurisdiction pursuant to its legislative mandate.

Vitelco has also argued that in the event a bankruptcy petition is filed, a bankruptcy court may appoint a trustee and create a jurisdictional confrontation between the PSC and the bankruptcy court. See Hr'g Tr. 61-62, Jan. 31, 2006. However, the filing of a bankruptcy petition does not stay commencement or continuation of an action to enforce a government's regulatory power or police powers. 11 U.S.C. § 362(b)(4). This statute has been interpreted to permit a public commission to block the transfer of franchise operating certificates in bankruptcy court.

See Yellow Cab. Coop. Ass'n v. Metro Taxi (In re Yellow Cab Coop. Ass'n), 132 F.3d 291 (10th Cir. 1991).

This Court is confident that a bankruptcy court will examine, and act in accordance with, all applicable regulatory statutes that may affect a public utility that may be subject to that court's jurisdiction. *See Corey v. Blake*, 136 F.2d 162 (9th Cir. 1943) ("Presumption of regularity attends the conduct of bankruptcy proceedings, as well as trial generally."); *see also, In re Creamer*, 1987 U.S. Dist. LEXIS 4680, at *1 (D. Kan. 1987) ("[P]resumptions with respect to regularity of the proceedings are to be indulged in favor of the bankruptcy judge's order").

III. CONCLUSION

The Court is mindful of the role of Vitelco in the Virgin Islands community. In 1959, the Government of the Virgin Islands granted Vitelco a franchise to provide the people of the Virgin Islands "a modern and adequate system of domestic and world-wide telephone and related services." *See Vitelco's Mot., Ex. C-3* (the Franchise Agreement). As a regulated public utility, Vitelco is recognized as an entity which is "declared to be affected with a public interest." 30 V.I.C. § 1. As Vitelco has argued, any adverse effect from a transfer could affect Vitelco and the very community which Vitelco serves. Vitelco argues that

the execution of the provisions of the Inter-Creditor Agreement will cause such irreparable harm to employees and requires injunctive relief.

Under these circumstances, as it must with all requests for extraordinary relief, the Court does not undertake its task lightly. Indeed, in its analysis the Court must determine whether the *sine qua non* for injunctive relief – irreparable harm – is imminent. Arguably there are two related catalysts for Vitelco's anticipated harm: (1) the execution of the provision of the Inter-Creditor Agreement regarding Vitelco; and (2) the potential appointment of a trustee in a bankruptcy proceeding. At this point in time, however, Vitelco is neither mentioned in the Inter-Creditor Agreement, nor is there any certainty that Vitelco will be directly affected by the potential appointment of a trustee. Because there is insufficient indicia that the anticipated harm may materialize in the manner that Vitelco suggests or with any degree of certainty, the law requires an outcome other than that urged by Vitelco.

Accordingly, Vitelco's motion for a temporary restraining order and preliminary injunction will be denied.¹¹ An appropriate order accompanies this memorandum.

Dated: February 10, 2006

/S/
CURTIS V. GÓMEZ
District Judge

ATTEST:

WILFREDO F. MORALES
Clerk of the Court

By: _____
Deputy Clerk

Copies to:

Judge C.V. Gómez
Judge G.W. Barnard
Joel H. Holt, Esq.
J. Daryl Dodson, Esq.
Richard H. Hunter, Esq.
Gerard G. Pecht, Esq.
Thomas J. Allingham II, Esq.
Matthew J. Duensing, Esq.
Wilfredo F. Morales
Lydia Trotman
Olga Schneider
Tejasvi Srimushnam
Kendra Nielsam

¹¹ Of course, denial of a preliminary injunction does not foreclose the possibility of obtaining injunctive relief at some future point. See, e.g., *Univ. of Texas v. Camenisch*, 451 U.S. 390, 394 (1981) (noting that denial of preliminary injunction is not dispositive of later request for a permanent injunction).

FOR PUBLICATION

IN THE DISTRICT COURT OF THE VIRGIN ISLANDS
DIVISION OF ST. THOMAS & ST. JOHN

VIRGIN ISLANDS TELEPHONE)	
CORPORATION,)	
)	
Plaintiff,)	
)	Civil No. 2006-18
v.)	
)	
RURAL TELEPHONE FINANCE)	
COOPERATIVE, GREENLIGHT)	
CAPITAL QUALIFIED, L.P.P.,)	
GREENLIGHT CAPITAL L.P., and)	
GREENLIGHT CAPITAL OFFSHORE,)	
LTD.,)	
)	
Defendants.)	
)	

ATTORNEYS:

Joel H. Holt, Esq.

St. Croix, U.S.V.I.

For the Plaintiff,

J. Daryl Dodson, Esq.

St. Thomas, U.S.V.I.

For the Defendant RTFC,

Richard H. Hunter, Esq.

St. Thomas, U.S.V.I.

For the Defendant RTFC,

Gerard G. Pecht, Esq.

Houston, TX

For the Defendant RTFC,

Thomas J. Allingham II, Esq.

Wilmington, DE

For the Defendant Greenlight,

Matthew J. Duensing, Esq.

St. Thomas, U.S.V.I.

For the Defendant Greenlight.

ORDER

Before the Court is plaintiff Virgin Islands Telephone Corporation's motion for a temporary restraining order and preliminary injunction. For the reasons stated in the accompanying memorandum of even date, it is hereby

ORDERED that the motion is **DENIED**.

Dated: February 10, 2006

_____/S/
CURTIS V. GÓMEZ
District Judge

ATTEST:

WILFREDO F. MORALES
Clerk of the Court

By: _____
Deputy Clerk

Copies to:

Judge C.V. Gómez
Judge G.W. Barnard
Joel H. Holt, Esq.
J. Daryl Dodson, Esq.
Richard H. Hunter, Esq.
Gerard G. Pecht, Esq.
Thomas J. Allingham II, Esq.
Matthew J. Duensing, Esq.
Wilfredo F. Morales
Lydia Trotman
Olga Schneider
Tejasvi Srimushnam
Kendra Nielsam